IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ petition no. 477/2003 (S/S)

Adarsh Kumar …… Petitioner.

Versus

State …….. Respondents.

Date of decision: 04, November 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 477 of 2003 (S/S)

Adarsh Kumar
S/o Sri Mangat Ram Dabral
C/o R.P. Maithani
14 Bigha, Muni Ki Reti
Rishikesh,
Distt-Tehri Garhwal & others ……..… Petitioners

Versus

State of Uttaranchal, through Secretary
Education, Government of Uttaranchal
Dehradun, and others …… Respondents

Mr. Pankaj Purohit/Mr. Anil Dabral, learned Counsel for the petitioners.
Mr. Subhash Upadhyaya, learned Standing Counsel for the respondents.

Hon'ble Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioners have sought mandamus commanding the respondents to consider their cases for appointment on the post of Assistant teacher L.T. Grade (Hindi Language).

2) Brief facts of the case, as narrated in the writ petition, are that the respondents No. 3 and 4 issued an advertisement (copy Annexure-1 and 2 to the writ petition) on 24.06.2002 and 17.06.2002 through Daily Newspaper, inviting applications for the post of Assistant Teachers L.T. Grade in Garhwal Mandal / Kumaon Mandal for various subjects, including Hindi language. As per the advertisement for the post of Asst. Teacher L.T. Grade (Hindi Language) a candidate was required to possess Hindi as subject in Graduation degree and should have Sanskrit as a subject in intermediate coupled with the diploma in L.T. or

B.Ed. The petitioners possess all the requisite qualifications and were eligible for the said post. They submitted their applications with necessary testimonials for the same. Petitioner No. 1 further applied for Assistant Teacher, L.T. Grade, Sanskrit in Kumaon Mandal as he possessed Sanskrit as another subject in Graduation, apart from being a Post Graduate in said subject. It is stated in the writ petition that the recruitment was to be made as per the provision contained in rule 15 of U.P. Subordinate Education (Trained Graduates Grade) Service Rules, 1983. Under said Rule, read with the Appendix 'D' of the Rules, candidates get quality points in the following manner:-

S.No.	Name of Examination	Quality Points.
(i)	High School	The % of Marks/10
(ii)	Intermediate	The % of Marks x 2/10
(iii)	Graduate Degree	The % of Marks x 4/10
(iv)	Training	
	Theory	
	Ist Division-	12
	II nd Division	06
	III Division	03
	Practical-	
	Ist Division-	12
	II nd Division	06
	IIIrd Division	03
(V)	Post Graduate Degree	
	Ist Division-	15
	II nd Division	10
	IIIrd Division	05

It is alleged by the petitioner that for preparing the merit list, quality points are give also for post graduate degree, irrespective of the subject. In the month of June, 2003, respondents have issued appointment letters for filing the post of Assistant Teacher, L.T. Grade, Hindi (Language) but the petitioners have been left out. On enquiry the petitioners came to know that their post graduate degrees in Sanskrit and Hindi have not been considered and no quality points has been awarded for the same. Under the Rules, it is not open for the respondents not to grant quality points to the candidates. In para 12 of the writ petition, it has been mentioned one Shri Purananand Bhatt, Sri Satish Pokhriyal, Indramohan Dobhal, Manmohan Bahuguna, Laxmi Bamrara and Sarita Sayana were given quality points for P.G. Degree in Sanskrit for their appointment in Hindi subject in recruitment process of 1997-1999 (copy Annexure 4 and 5 to the writ petition). The petitioners, alleging the discrimination as arbitrary and violative of Article 14 and 16 of the Constitution of India, relying of the Apex Court Judgment of Dr. M.A. Haque Vs. Union of India, 1993 (2) S.C.C. Pg. 213, have sought the mandamus for consideration of their cases for the appointment of L.T. Grade teachers through this writ petition.

3) On behalf of respondent no. 1 and 2 a counter affidavit has been filed in which it has been admitted that for the post of Assistant Teacher. L.T. Grade, Hindi (Language), the required qualifications is Graduation Degree with Hindi and Intermediate with Sanskrit coupled with the Diploma in L.T., B.T. of B.Ed. Publication of advertisement and inviting applications as alleged in the writ petition are also admitted. However, it is stated in the counter affidavit that none of the petitioners have passed intermediate with Sanskrit as a subject. They do not

fulfill the condition required for the post as such there is no question of awarding quality points to them. As to the appointment of Shri Purananand Bhatt and Shri Satish Pokhriyal and others it has been stated that it is not clear from the writ petition if they possess Sanskrit as a subject in Intermediate. As such the petitioners cannot take advantage or parity with them.

4) In the rejoinder affidavit, the petitioners have stated that all of them have passed Intermediate examination with Sanskrit as a subject. In Para-5 of the rejoinder affidavit, it has been stated that certificate of Uttar Madhyama of Sampuranand Sanskrit University, Varanasi is recognized as equivalent to Intermediate examination of U.P. Board of High School and Intermediate examination. Copies of the marksheets of the petitioners are filed as Annexure RA-1 to the rejoinder affidavit.

5) I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit along with the annexures annexed thereto.

6) The short question for consideration before this Court is whether, the petitioners are wrongly denied quality points for consideration of their cases for the post of Assistant Teacher, L.T. Grade, Hindi (Language).

7) Admittedly, the respondent invited applications for the various posts of Assistant Teacher (L.T.) Grade, including 190 posts of Assistant Teacher, L.T. Grade, Hindi (Language), through advertisement (copy Annexure 1 and 2 to the writ petition). It is also not disputed that all the 9 petitioners were candidates for the post of Assistant Teacher, L.T. Grade, Hindi (Language). It is also not denied that for the purposes of recruitment, the quality points are to be counted as provided in Appendix ‘D’ read with Rule 15 of U.P. Subordinate

Educational (Trained Graduates Grade) Service Rules 1983. The only dispute raised in counter affidavit related to the fact that if the petitioners had not passed Intermediate Examination with Sanskrit as a subject. But from the Annexure R.A.-2 to the Rejoinder affidavit filed on behalf of the petitioner, it is clear that petitioner No. 1 Adarsh Kumar Dabral has passed examination of Uttar Madhyama in the year 1991 with Sanskrit as compulsory subject from Sampurannad Sanskrit University, Varanasi (copy of marksheet and certificate- Pg. 6 and 7 to the rejoinder affidavit). The petitioner No. 2 Shailendra Dutt Dobhal has passed the same examination in the year 1994 with Sanskrit as a subject from the same University (copy of marksheet and certificate- Pg. 8 and 9 to the rejoinder affidavit). The petitioner No.3 Sri Arvind Chandra Bhaguna has also passed the Uttar Madhyama examination from Sampurannad Sanskrit University, Varanasi in the year 1991 with Sanskrit as a compulsory subject (copy of marksheet and certificate- Pg. 10 and 11 to the rejoinder affidavit). Petitioner No. 4 Jamuna Prasad has passed his Intermediate examination with Sanskrit as a subject in 1991 through U.P. Board of Intermediate education (copies of marksheet & certificate at pg. 12 and 13 or rejoinder affidavit) Petitioner No. 5 Shri Kedar Dutt Semwal has passed Uttar Madhyama examination from Sampurannad Sanskrit University, Varanasi in the year 1989 with Sanskrit as a compulsory subject (copies of marksheet and certificate - Pg. 14 and 15 to rejoinder affidavit). Petitioner No.6 Shri Dataram Purval has also passed Uttar Madhyama examination from the same University (copy of marksheet and certificate - Pg 16 and 17 of rejoinder affidavit). Petitioner No.7 Shri Mahendra Vyas has passed Intermediate Eamination through Intermediate Education Board of U.P. in the year 1993 with Sanskrit as a subject (copy of marksheet and certificate- Pg. 18 and 19 to the rejoinder affidavit). Petitioner No.8 Shri Ram Bharosa, has

passed Uttar Madhyama examination from Sampurannad Sanskrit University, Varanasi in the year 1993 (copy of marksheet and certificate- Pg. 20 and 21 to the rejoinder affidavit). And petitioner No.9 Shri Chaman Lal Raturi had also passed the said examination in the year 1996 from the same Uttaranchal with Sanskrit as a compulsory subject (copy of marksheet and certificate- Pg. 22 and 23 to rejoinder affidavit).

8) In view of above mentioned certificate, the stand taken by the respondents that the petitioners were not qualified for being considered for the post of Assistant Teacher, L.T. Grade, Hindi (Language) gets belied. And counter affidavit filed on behalf of respondents No. 1 and 2 to that extent is not true. That being the position, the petitioners were entitled for the quality point marks for their High School, Intermediate and Graduation. And the petitioner No. 1 is further entitled to quality point marks for the Post Graduate Degree, which he has obtained in Sanskrit.

9) Sub rule (4) of Rule 15 of U.P. Subordinate Educational (Trained Graduates Grade) Service Rules 1983 reads as under:
"The selection Committee shall, after considering the cases of candidates on the basis of lists referred to in sub-rule (2), prepare subjectwise lists of selected candidates for appointment in L.T.Grade in order of merit as disclosed by the quality points complied under sub-rule (2). If two or more candidates obtained equal quantity points the name of the candidate who is older in age shall be placed higher in list. The number of names in the list shall be larger (but not larger by more than 25 per cent) than the number of vacancies advertised under sub-rule (1)."

Appendix ‘D’ read with the above rule shows that for calculating the quality points, for a Post Graduate Degree, it has not been made necessary that the Post Graduate Degree should be in the same subject for which the candidate has sought appointment in L.T. Grade. As far as recognition of Uttar Madhyama as equivalent to Intermediate examination is concerned, para 9 of the affidavit dated 1st July, 2004 filed by Shri Mahadev Bhatt, Regional Joint Director of Education, Garhwal Mandal in the form of Supplementary counter affidavit shows that it is admitted that the Uttar Madhayama is equivalent to Intermediate examination. Now after this admission from no angle denial of quality points to the petitioners can be said to be justified. In view of principle of law laid down in MA Haque V/s Union of India (1993) 2 1993 Supreme Court cases pg 213, the Government is supposed to comply with the rules framed under Article 309 of the Constitution of India. U.P. Subordinate Educational (Trained Graduates Grade) Service Rules 1983 are the rules which are framed under Article 309 of the Constitution of India and respondents cannot bypass the same.

7) In the circumstances, in view of the above discussions this Court is in full agreement with the submission of Shri Pankaj Purohit, Learned Counsel for the petitioners that the petitioners have wrongly been denied consideration of their cases by not awarding them quality points. Therefore, writ petition deserves to be allowed. The writ petition is allowed. A mandamus is hereby issued directing the respondents to consider the cases of the petitioners by awarding them quality points as per the U.P. Subordinate Educational (Trained Graduates Grade) Service Rules 1983 within a period of three months from today, as they fulfill necessary qualifications as advertised by the respondents. And those of the petitioners who

obtain higher quality points to the points obtained by the last man selected in the recruitment, shall be given appointment within a month there after on the post of Assistant Teacher, L.T. Grade, Hindi (Language). No order as to costs.

(Prafulla C. Pant, J.)

Dt.: November 4, 2004
Sweta